

June 24, 2004

MORIN BRICK COMPANY
Request for Advisory Ruling

NOTICE OF PROCEEDING
AND REQUEST FOR
COMMENTS

I. NOTICE OF PROCEEDING

On May 28, 2004, the Commission received a letter from Morin Brick Company (Morin), stating its intent to participate in the NEPOOL Market as a Market Participant End User. Specifically, Morin plans to “self-supply” its own electricity needs by participating directly in the NEPOOL market and would thus not purchase from a retail electricity provider. Morin states that in order to participate in the NEPOOL market in this manner, Morin must be able to certify that neither NEPOOL nor the ISO-NE will be subject to Commission regulation as a retail electricity supplier in Maine.

Morin notes that the New Hampshire Public Utilities Commission has determined that it does not have jurisdiction over NEPOOL or ISO-NE under similar circumstances. *Petition of Luminescent Systems, Inc.*, Order No. 24, 172 (NHPUC May 13, 2003). Morin asks that the Maine Commission determine that its participation in the NEPOOL market will not subject NEPOOL or ISO-NE to regulation as a retail electricity supplier.

The Commission has decided to docket this matter as a request for an advisory ruling and will begin the proceeding by seeking comment from interested persons on the issues raised by Morin’s request.

II. REQUEST FOR COMMENTS

The Commission requests comments on whether NEPOOL or the ISO-NE would be subject to Commission jurisdiction as a competitive electricity provider under the circumstances describe in the Morin’s letter. The Commission also seeks comment on the issues described below. The Commission requests that comments on this matter be filed no later than July 9, 2004.

1) The Maine statutes require that any entity that sells electricity at retail in the State must first obtain a license from the Maine PUC. 35-A M.R.S.A. § 3203(2). When an entity purchases electricity directly from the NEPOOL market for retail purposes, is either NEPOOL or the ISO-NE the seller of electricity to that entity? Does NEPOOL or the ISO-NE actually buy or sell power? If not, who should be considered the sellers of the electricity? Would there be any practical way to identify the sellers of the electricity for purposes of requiring a license?

2) Does Morin's request implicate any policy issues? Would Morin purchasing directly from the NEPOOL market without any licensed seller be in conflict with any of the goals or purposes of Maine's Restructuring Act?

3) Purchasing directly from the NEPOOL market would appear to allow an entity to circumvent Maine's eligible resource portfolio requirement. Should this outcome affect the Commission's determination in this proceeding?

4) Can an entity accomplish the same result as purchasing directly from the NEPOOL market by forming an affiliate whose purpose would be to purchase from the pool and sell only to it affiliate. By selling only to its affiliate, would the entity that buys the power from the market escape Commission licensing requirements on the grounds that it is not selling to the "public?" 35-A M.R.S.A. § 3201(5). What would be the implications of such a result on the goals and purposes of the Restructuring Act?

5) Does an entity purchasing directly from the NEPOOL market raise any technical or implementation issues for utilities, such as with respect to settlements or metering? Would there be a need to modify any utility terms and conditions?

BY ORDER OF THE PRESIDING OFFICER

Mitchell M. Tannenbaum